

REMARKS

Applicant has studied the Office Action dated December 7, 2006. Claims 1-13 and 15 are pending. Claims 1, 12 and 15 have been amended and claim 12 has been canceled without prejudice. Claims 1, 8 and 12 are independent claims. No new matter has been added as the amendments have support in the specification as originally filed.

It is submitted that the application, as amended is in condition for allowance. Reconsideration and reexamination are respectfully requested.

Amendments to the Claims

Claim 15 has been amended to correct dependency in view of a canceled claim and to more clearly disclose the invention. It is respectfully submitted that the amendment has support in the application as originally filed and is not related to patentability.

§ 112 Rejections

The Examiner rejected claim 1 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner asserted that limitation "to be described later" is not clear and contains indefinite language.

With this paper, claim 1 has been amended to the limitation "to be described later." It is respectfully asserted that the grounds for the rejection of claim 1 has been overcome and it is respectfully requested that the rejection be withdrawn.

§ 102 Rejections

Claim 12 was rejected under 35 U.S.C. § 102(e) as being anticipated by Flint (U.S. Pat. Pub. No. 2002/0063854). Applicant respectfully traverses the rejection.

It is respectfully noted that a proper rejection for anticipation under § 102 requires complete identity of invention. The claimed invention, including each element thereof as recited in the claims, must be disclosed or embodied, either expressly or inherently, in a single reference. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565,

1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991); Standard Havens Prods., Inc. v. Gencor Indus., Inc., 953 F.2d 1360, 1369, 21 U.S.P.Q.2d 1321, 1328 (Fed. Cir. 1991).

With this paper, claim 12 has been amended to incorporate the allowable material indicated by the Examiner in claim 14, which has been canceled without prejudice. Therefore, it is respectfully asserted that independent claim 12 is in condition for allowance.

§ 103 Rejections

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Flint in view of Kubota et al. (U.S. Pat. No. 6,973,254). This rejection is respectfully traversed.

It is respectfully noted that the Federal Circuit has provided that an Examiner must establish a case of prima facie obviousness. Otherwise the rejection is incorrect and must be overturned. As the court recently stated in In re Rijkaert, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993):

"In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. 'A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.' If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned." (citations omitted.)

As previously noted, claim 12 has been amended to incorporate the allowable material indicated by the Examiner in claim 14 and is, therefore, in condition for allowance. It is respectfully asserted that claim 13, which depends from claim 14, also is in condition for allowance.

Double Patenting Rejection

The Examiner rejected claims 1-11 based on non-statutory type double patenting in view of claims 1-13 of U.S. Pat. No. 6,874,893 ("the '893 patent"). This rejection is respectfully traversed.

It is respectfully submitted that the '893 application and the present application are commonly owned. A terminal disclaimer in compliance with 37 C.F.R. 1.321(c) is submitted with this paper to overcome this rejection. It is respectfully requested that the rejection be withdrawn.

Allowable Subject Matter

Applicant graciously acknowledges the Examiner's indication of allowable subject matter in claims 14 and 15. As previously noted, independent claim 12 has been amended to incorporate the allowable subject matter of claim 14, which has been canceled without prejudice, and, therefore, claim 12 is in condition for allowance. It is respectfully asserted that claim 15, which has been amended with this paper to depend from claim 12, also is in condition for allowance.

CONCLUSION

In view of the above remarks, Applicant submits that claims 1-13 and 15 of the present application are in condition for allowance. Reexamination and reconsideration of the application, as originally filed, are requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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Date: March 7, 2007

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